

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2909-01
Bill No.: HB 1067
Subject: Employees - Employers; Labor and Management; Liability
Type: Original
Date: January 21, 2002

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
All State Funds	(Could Exceed \$100,000)	(Could Exceed \$100,000)	(Could Exceed \$100,000)
Total Estimated Net Effect on <u>All</u> State Funds	(Could Exceed \$100,000)	(Could Exceed \$100,000)	(Could Exceed \$100,000)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
Federal Funds	(Could Exceed \$100,000)	(Could Exceed \$100,000)	(Could Exceed \$100,000)
Total Estimated Net Effect on <u>All</u> Federal Funds	(Could Exceed \$100,000)	(Could Exceed \$100,000)	(Could Exceed \$100,000)

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
Local Government	(Could Exceed \$100,000)	(Could Exceed \$100,000)	(Could Exceed \$100,000)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 7 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Missouri Lottery Commission, Lincoln University, Missouri Southern State College, Northwest Missouri State University, Southeast Missouri State University, City of St. Louis, Jackson County, St. Louis County, and Greene County** did not respond to our fiscal impact request.

Officials from the **Missouri Senate** did not respond to our fiscal impact request. However, in response to a similar proposal from a prior session, Senate officials assumed the proposed legislation would have no fiscal impact on their agency.

Officials from the **Office of the Attorney General** and the **Department of Corrections** did not respond to our fiscal impact request. However, in response to a similar proposal from a prior session, both agencies assumed that the proposed legislation would have an unknown fiscal impact in the form of additional costs to their agencies.

Officials from the **Office of the State Courts Administrator (CTS)** did not respond to our fiscal impact request. However, in response to a similar proposal from a prior session, CTS assumed the proposed legislation would create a new limited cause of action for wrongful discharge. Currently, the general rule in Missouri law is that, absent some intervening factor, employment is "at will" and an employee has no right to continued employment. CTS noted the proposal would permit civil recovery for wrongful discharge in a number of cases, but have no data to indicate how many additional suits may be filed or of those filed how many would proceed to trial. CTS stated they would expect a number of test cases to proceed through the courts to establish the parameters of the law and after some period of adjustment, employment practices of many employers would probably change to reduce liability exposure. CTS assumed if there are a significant number of additional civil filings, there would be a corresponding workload and budgetary impact; however, no projections are feasible.

Officials from the **Office of the Governor, Office of the Lieutenant Governor, Secretary of State's Office, Missouri House of Representatives, Departments of Agriculture, Labor and Industrial Relations, Higher Education, Health and Senior Services, Revenue, Missouri Tax Commission, Missouri Gaming Commission, Missouri State Highway Patrol, Truman State University, Harris-Stowe State College, Central Missouri State University, and Missouri Western State College** assume the proposed legislation would have no fiscal impact on their agencies.

Officials from the following agencies assume the proposed legislation would have unknown fiscal impact in the form of additional costs to their agencies: **Department of Conservation,**
ASSUMPTION (continued)

Department of Economic Development, Department of Elementary and Secondary Education, State Auditor's Office, State Treasurer's Office, and Southwest Missouri State University.

Officials from the **University of Missouri** assume the cost of the proposal would be expensive in imposing additional procedures requiring notice of policy changes which would expose their institution to increased liability. Officials assume total costs would exceed \$100,000.

Officials from the **Missouri Consolidated Health Care Plan** assume anytime litigation is involved, the fiscal impact can be substantial; however, a specific dollar amount cannot be predicted.

Officials from the **Department of Natural Resources (DNR)** state that their department does not anticipate any wrongful discharges of employees; however, if a wrongful discharge is alleged and a suit is filed against the Department, the Department anticipates there will be an additional workload associated with a second process. DNR assumes there is a potential for costs related to punitive damages but is unable to estimate the amount.

Officials from the **Department of Social Services (DOS)** state that it is not possible to accurately estimate the fiscal impact of this proposal because the number, length, and complexity of the future cases under this proposal cannot be determined with precision. DOS notes that the size of the damage award is case dependent and cannot be accurately forecasted. DOS states that cases against their Department will probably be referred to the Office of the Attorney General for representation, thereby accessing the Legal Expense Fund, due to the availability of compensatory and punitive damages.

Officials from the **Department of Mental Health (DMH)** assume the proposal potentially increases exposure of claims for litigation expenses, relocation expenses, and punitive damages. DMH states that potential damages are not easily definable, but each case poses potential awards to employees and may cost the Department and the Legal Expense Fund significant amounts of money. DMH states the proposal expands the types of remediation available to DMH employees; however, a projection of related costs is incalculable.

Officials from the **Department of Insurance (INS)** assume the department would provide one-time training of managers and supervisors on their responsibilities in complying with disciplinary processes. INS assumes there would need to be ongoing training for new managers/supervisors and for existing staff on changes to disciplinary processes. INS assumes the proposal would result in minimal fiscal impact to the Department which could be absorbed by existing staff.

ASSUMPTION (continued)

Officials from the **Department of Transportation (DHT)** assume this proposal could increase

legal costs, payments in back wages, interest and punitive damages. DHT notes that because of the broad language in the proposal, the number of potential claims which could be filed against the Department cannot be estimated. DHT also notes the proposal would place a significant burden on the Department to provide advance notice of every change to every personnel policy. Therefore, DHT assumes the proposed legislation would have a fiscal impact, but the impact is indeterminable.

Officials from the **Office of Administration - Division of Personnel (COA)** assume the proposal would not substantially change the workload of the Personnel division or the Personnel Advisory Board. COA notes that the proposal provides that public employees may seek relief only after fully exhausting administrative or civil service remedies. COA assumes that the proposal would probably result in fiscal impact to their agency only in the event that one of their employees was discharged and they were determined by the court to have engaged in fraud, malice, or reckless disregard of the rights of the employee and, therefore, report no fiscal impact.

Oversight assumes that it would be difficult to accurately estimate the number of cases that would be filed against any employer, as defined in this proposal, for wrongful discharge. The definition of employer would include the state, counties, municipal corporations, townships, school districts and any other political subdivision of government. Oversight could not estimate the number of employees who would demand a jury trial nor could the amount of potential damages which could be awarded be estimated. It was assumed that the fiscal impact could exceed \$100,000 annually.

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
---	---------------------	---------	---------

ALL STATE FUNDS

Costs - State Agencies

	<u>(Could Exceed</u>	<u>(Could Exceed</u>	<u>(Could Exceed</u>
Legal expenses/damage awards	<u>\$100,000)</u>	<u>\$100,000)</u>	<u>\$100,000)</u>

FEDERAL FUNDS

Costs - State Agencies

	<u>(Could Exceed</u>	<u>(Could Exceed</u>	<u>(Could Exceed</u>
Legal expenses/damage awards	<u>\$100,000)</u>	<u>\$100,000)</u>	<u>\$100,000)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
---	---------------------	---------	---------

LOCAL FUNDS

FISCAL IMPACT - Local Government

FY 2003
 (10 Mo.)

FY 2004

FY 2005

Costs - Political Subdivisions

	<u>(Could Exceed</u> <u>\$100,000)</u>	<u>(Could Exceed</u> <u>\$100,000)</u>	<u>(Could Exceed</u> <u>\$100,000)</u>
Legal expenses/damage awards			

FISCAL IMPACT - Small Business

Small business that employ 15 or more employees each working more than 20 calendar weeks in a year, may face legal costs and damage awards as a result of additional lawsuits that would need to be defended. In addition, the proposal mandates a written personnel policy be made and maintained by businesses to be prepared for potential litigation, which may cause increased paperwork for small businesses that do not already have a written policy.

Small business law firms may be positively impacted by increased business as a result of the proposal.

DESCRIPTION

The proposal creates a cause of action for wrongful discharge. Employees may sue for wrongful discharge if:

- (1) they are discharged for refusing to violate the law or public policy;
- (2) the employer violated its own written personnel policy in dismissing the employee; or
- (3) the employer deviates from a customary practice used for dismissal of employees.

An employee may be discharged at will during a probationary period, which may not exceed 12 months. Employees maintain the burden of proof in wrongful discharge suits.

When an employee claims the employer violates its own personnel policy or customary practices regarding dismissal, an employee may be awarded back wages and employee benefits from the date of discharge, plus interest, except that an employee has a duty to mitigate damages. In addition, an employee may be awarded attorney's fees, court costs, and relocation expenses.

DESCRIPTION (continued)

When an employee claims the discharge was in retaliation for the employee's refusal to violate the law or public policy, punitive damages and compensatory damages for physical and mental distress are available. To obtain punitive damages, the employee must show by clear and convincing evidence that the employer engaged in fraud, malice, or reckless disregard for the rights of the employee.

Employers subject to the proposal include those employing 15 or more people at least 20 weeks per year, and all employees of the state and its political subdivisions. The proposal excludes federal employees and may not amend or negate the terms of a collective bargaining agreement. Employees must exhaust an employer's established internal procedures which may not exceed 90 days before filing a suit. Lawsuits must be filed within one year of the date of discharge, but internal procedures will toll that date, up to 180 days. Any party may demand a jury trial.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the Governor
Office of the Lieutenant Governor
Secretary of State's Office
Missouri House of Representatives
Department of Agriculture
Department of Labor and Industrial Relations
Department of Higher Education
Department of Health and Senior Services
Department of Revenue
Missouri Tax Commission
Missouri Gaming Commission
Missouri State Highway Patrol
Truman State University
Harris-Stowe State College
Central Missouri State University
Missouri Western State College
Southwest Missouri State University
University of Missouri
Missouri Consolidated Health Care Plan
Department of Conservation

SOURCES OF INFORMATION (continued)

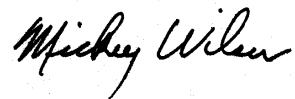
Department of Economic Development

KLR:LR:OD (12/01)

Department of Elementary and Secondary Education
Department of Natural Resources
Department of Social Services
Department of Mental Health
Department of Insurance
Department of Transportation
Office of Administration - Division of Personnel
State Auditor's Office
State Treasurer's Office

NOT RESPONDING

Missouri Senate
Office of the Attorney General
Department of Corrections
Office of the State Courts Administrator
Missouri Lottery Commission
Lincoln University
Missouri Southern State College
Northwest Missouri State University
Southeast Missouri State University
City of St. Louis
Jackson County
St. Louis County
Greene County



Mickey Wilson, CPA
Acting Director

March 15, 2002